

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, April 28, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Eugene Carroll, Gerry Krieser, Roger Larson, Dan Marvin, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Brian Will, Becky Horner, Tom Cajka, Greg Czaplewski, Duncan Ross, Derek Miller, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held April 14, 2004. Motion for approval made by Krieser, seconded by Carroll and carried 8-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand and Sunderman voting 'yes'; Taylor abstaining.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:

April 28, 2004

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1778B, WAIVER NO. 04006 and STREET AND ALLEY VACATION NO. 04002.**

Larson moved to approve the Consent Agenda, seconded by Krieser and carried 9-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

This is final action on Special Permit No. 1778B and Waiver No. 04006, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 04022
FROM AG AGRICULTURAL TO H-3 HIGHWAY COMMERCIAL
ON PROPERTY GENERALLY LOCATED
AT 4801 N.W. HIGHWAY 34.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 28, 2004

Members present: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, Pearson and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

1. **John Zakovec**, the owner and applicant, believes that the staff report is complete and he appeared to answer any questions.

Carlson inquired about the Heritage Center operation and Zakovec explained that to be Grandpa John's Pumpkin Patch activities which is part of the farming operation.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 28, 2004

Taylor moved approval, seconded by Larson and carried 9-0: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, Pearson and Bills-Strand voting yes. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04025
TO AMEND § 27.71.120 OF THE LINCOLN
MUNICIPAL CODE TO ALLOW TEMPORARY
CONCRETE PAVING PLANTS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 28, 2004

Members present: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, Pearson and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: None.

Derek Miller of the Planning staff submitted proposed revised language from the City Law Department to address the recommendations of Public Works and the Health Department.

1. On page 4, line 5, strike the number "300" and insert the number "600".
2. On page 4, lines 12 & 13, delete the sentence "Additional bonding may be required to pay for repairs of damage to such nonpaved roads."
3. On page 4, line 15, after the word "project" insert a period and add the following two sentences: Restoration includes replanting of vegetation and maintenance of erosion and sediment control until the site is reestablished. Any paved or unpaved road damaged by the permittee's use of such road, including permittee's suppliers and concrete trucks entering and/ or leaving the plant, shall be repaired at permittee's cost and expense.
4. On page 5, line 4, strike the words "the amount of \$5,000" and insert the words "an amount determined by the City to be sufficient".
5. On page 5, line 4, after the word "site" insert the following words: "and to pay for repairs to paved and unpaved roads damaged by permittee's use of such roads".

If the above amendments are adopted, I recommend that you direct that the same amendments be made to the provisions governing temporary paving plants for consistency purposes.

Proponents

1. **Jack Wolfe**, 830 Wells Fargo Center, appeared on behalf of **Dobson Bros. Construction Company**, the applicant, which has been a concrete paving utility contractor in the city for many, many years. Subsequent to the adoption of the ordinance for temporary concrete batch plants which is used for new subdivisions, it became obvious to his client that maybe there was a missing link relative to arterial paving within the city, and that is what prompted this application. The applicant has met with Public Works and the Law Department. Wolfe believes that the conditions that have been imposed in this ordinance, which are similar to those existing in the concrete batch plant ordinance, adequately protect the city as well as neighboring landowners. There is going to be a cost savings to the city, and there will definitely be the potential for the reduction in concrete truck traffic in different parts of the city going from permanent plant sites.

Wolfe then addressed the proposed amendments submitted by the City Attorney:

#1 would change the distance requirement from 300 feet to 600 feet. Wolfe believes the 300' as proposed, which came from the existing ordinance, has adequately

protected both the city and the neighboring landowners. The applicant would prefer 300 feet.

Wolfe agreed with #2 and #3.

#4 deals with the amount of the performance bond to guarantee clean-up of the site, etc. Wolfe would prefer that the amount of \$5,000 be left in place because he believes a potential permittee needs to know by looking at the ordinance approximately what that amount is going to be. He would not be opposed to adding language such that the amount could be different as determined by the city under extraordinary circumstances.

Wolfe agreed with #5.

Carlson suggested that #4 could be reworded, "the minimum amount of \$5,000 or an amount determined by the City to be sufficient." Wolfe indicated that he would not object.

Bills-Strand inquired as to how long the 300' distance requirement has been in place. Wolfe did not know.

There was no testimony in opposition.

Carlson asked Health Department to address the 300' versus 600' distance requirement. Chris Schroeder of the Health Department stated that the Health Department is recommending the 600' distance due to concerns of noise pollution and off-site dust. Schroeder did not know the historical context of the 300', but the Health Department has had experience with the noise code and noise complaints by abutting residential districts. Carlson noted that the applicant is required to comply with other applicable noise codes. Schroeder stated that it has been the Health Department's experience that sometimes the source will comply with the code but they will still get complaints. Bills-Strand suggested that the Health Department could get noise complaints even at 600'. Marvin wondered about the decibel reading at 300'. Schroeder indicated that the applicant would have to comply with the noise code, which talks about the receiving land use category, i.e. residential is 65 during the day and 55 at night. The extra 300' would provide an extra measure of protection.

Larson believes the 600' is pretty restrictive. Schroeder reiterated that the attempt is to protect against potential noise pollution conflicts.

Bills-Strand stated that she understands the noise issue, but in exchange there will be less truck traffic and noise. She's wondering if there might be a trade-off. Schroeder suggested that with a concrete plant you have the continuous noise of the mixers, etc., whereas the truck traffic would be more of an intermittent noise.

For comparison it was noted that 300' is the length of a football field. In Downtown Lincoln, one block is about 360' from center to center. Pearson commented then that currently, you could put a concrete plant one block away from residential or residential use.

Carlson inquired about the deletion of the language regarding the typical hours of operation, etc. Rick Peo of Law Department believes this was a Planning Department view of how they were incorporating the changes that were in the proposed draft. The typical hours of operation didn't seem appropriate for city arterial street projects versus a subdivision. Sometimes on city projects and surfacing, there is a need for extra hours of the day to operate and potentially on holidays if it was a time restrictive project. Carlson understands that the city does road projects at night sometimes, but maybe there is a different level of conflict. Peo suggested that it depends on the type and nature of the project. This ordinance is for temporary projects, and it is assumed that the hours of operation would be in the city's requirements to the contractor. Carlson's specific concern is that 55 decibels all night long may be a nuisance, although not in violation of the law. Peo believes it was a judgment call to delete that language.

With regard to the \$5,000 bond, Peo indicated that he was attempting to address the Public Works comments that they felt the \$5,000 may not be adequate to cover both the removal of the plant and any damages to the streets that are utilized. They wanted to have a case-by-case analysis on the bond amount. The bond amount would be established by the Public Works Department. Peo would agree to "minimum" of \$5,000.

2. Mark Hunzeker offered testimony in support at this time upon agreement of the Commission members. He suggested that the Commission needs to consider the trucks in regard to the 300'. A very significant part of the cost and time consumption that goes into building streets has to do with transportation. The ability to put a temporary plant in the area where you are doing the work saves a lot of cross-town trucking of concrete. In residential areas, in particular, it saves a lot of trips of big concrete trucks through built residential neighborhoods. If you can have the plant out at the edge where you don't have streets yet, you don't have to come back through the residential neighborhoods with the trucks. So trying to put a 600' limit does not make sense.

Response by the Applicant

Wolfe agreed with Mr. Hunzeker's testimony. 300' has worked in the past for a number of years. He has no evidence as to why it should be changed, and the 600' may cause more problems than it will solve.

The impression Marvin got was that these batch plants are going to be more around the periphery. Wolfe agreed that as the city has grown, the arterials need to be expanded from two to four lanes and that is where most of the work is taking place. He also pointed out that

it would not be possible to locate a facility in the inner city because it would not be possible to comply with the 300' separation. Marvin wondered why 600 feet is onerous if the plants are already off on the edges of town. Wolfe reiterated that the city is growing and the city is behind the growth curve in terms of expanding and widening the streets. He believes that 600' is going to be a problem, and that 300' is adequate, along with the other conditions in the ordinance, including the noise and emission code requirements.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 28, 2004

Larson moved approval, with amendments #2, #3 and #5 as proposed by the Law Department, and with amendment #4 adding, "...'minimum' of \$5,000, or an amount determined by the City to be sufficient.", seconded by Sunderman and carried 9-0: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, Pearson and Bills-Strand voting yes. The 300' distance requirement was not changed. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04026
FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
BETWEEN SOUTH STREET AND VAN DORN STREET,
FROM SOUTH 17TH STREET TO SOUTH 30TH STREET.

Members present: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, and Bills-Strand (Pearson declaring a conflict of interest).

Staff recommendation: Approval.

Ex Parte Communications: Dan Marvin stated that he is a Board Member of the Country Club Neighborhood Association, indicating that this has been an ongoing process that has gone on for two years and he has had numerous conversations which most of the Planning Commission members will hear during the public hearing. Marvin lives in the Country Club Neighborhood but his property is not in the area of this application.

Pearson stated that because she owns a very small property that bounds not only the Country Club neighborhood, but also the Irvingdale neighborhood, she will abstain from the discussion and declared a conflict of interest.

Bills-Strand stated that she has talked with Dan Marvin and Linda Wibbels, giving them some of the questions she will be asking during the public hearing.

Carroll indicated that he had also visited with Dan Marvin.

Derek Miller of the Planning staff submitted a revised legal description to be substituted in the staff report and four email messages in support.

Proponents

1. Linda Wibbels, presented the application on behalf of the Country Club Neighborhood Association and the Irvingdale Neighborhood Association. It was very logical that the two associations work jointly on this project because they are neighbors, they are contiguous to one another and they share a lot of the same similarities. In addition, the Country Club Neighborhood Association has been in existence since 1985, and since 1985 and up until today, the boundary lines of the two neighborhoods have always been overlapping and in question. The Country Club Neighborhood Association has over 2200 households, the majority of the properties being R-1 Residential. There is R-2 Residential zoning north of South Street, but there is a small little sliver coming down 27th to Stratford which is R-4 Residential. This change of zone request is a matter of housekeeping because the neighborhood by and large is R-1 with some R-2. The area is already fully built. There are no vacant lots.

Wibbels referred to the staff report where it is noted that these neighborhoods appear to have reached a point where the density and mix of residential uses seems appropriate. The current mix is approaching a tipping point, at which additional density would start to affect the stability and overload the carrying capacity of the neighborhood. Approval of this change of zone would preserve the current development pattern in the interior blocks, and allow for more influence on how land along South Street might eventually redevelop. The research shows an extremely high rate of owner-occupants. The Comprehensive Plan talks about the preservation of single family homes for use by future generations and preserving the existing stock.

Wibbels also suggested that this change of zone is part of affordable housing. She showed examples of two properties on South Street that were absentee owners, which are currently under contract and being sold to owner-occupants.

Wibbels urged that these factors together – contiguous neighborhoods, preserving the housing stock, affordable housing, avoiding the tipping point – are strong factors in support of this application.

Carroll inquired as to the average value of the homes in this request. Wibbels believes that the low end value would be \$79,900 to the higher end of \$300,000+. It would be difficult to do an average.

Carroll wondered about the people who like to live in those neighborhoods but cannot afford a home there. Wibbels' response was that the neighborhood wants to preserve the single

family character, and that can be more attainable by the change from R-4 to R-2. It does allow new single family owner occupants to move into an area in which they want to live. A lot of the absentee landlords even signed the petition.

2. Steve Masterson, 2125 Bradfield Drive, testified in support. His home is just inside the R-2 area. He has lived there since 1989, and about a year ago the homes along South Street were occupied by renters that were not related, and he has had to call the police repeatedly for parties at these homes. He is definitely in favor of converting from R-4 to R-2 because he does believe it will preserve the neighborhood.

Bills-Strand suggested that this change of zone may not do anything to change the tenants. Masterson does not believe it will hurt.

3. Adam Wall testified in support on behalf of the Irvingdale Neighborhood Association, stating that a majority of the association members are in favor of this change of zone. He grew up in the Near South, and he likes the character and continuity that old houses bring to a neighborhood.

4. Bruce Baker, 2000 Ryons, testified in support. He would like to see the neighborhood preserved.

5. Carol Brown, 2201 Elba Circle, testified in support on behalf of the **Lincoln Neighborhood Alliance**, 21 neighborhood associations which have endorsed their plan for action which includes neighborhood preservation and opposes zoning design that conflicts with current or historic use patterns and creates density detrimental to character of existing neighborhoods. The city should downzone in neighborhoods where strong support exists. These neighborhoods have maximized their infrastructure while creating a variety of housing choices.

6. Neil Balfour, 2108 S. 24th, testified in support; however, he does not believe the residences on the corner of South Street fit in with the rest of the neighborhood. The big house across the street from him was made into a hospital. On the other end of his block is a group home and across the street there is a friendship home. He believes the South Street area should be left alone. We have been singled out before. We have large homes and no one can afford to keep them. He is in favor of everything else, except the South Street corridor.

Neutral

1. John Layman, 2702 Colonial Drive, a member of the Country Club Neighborhood Association, stated that he was speaking in a neutral position. He has researched the activities of the neighborhood and could find no support in terms of economic obsolescence

in terms of home ownership based on the types of uses a single family residence offers. In looking at the values along the South Street corridor as compared to the houses on the inner side, there is not much difference in inflation. The houses on South Street were increasing more than the houses further in, and the houses on South Street adjacent to multi-family structures were also inflating. It is Layman's opinion that the South Street corridor should be maintained as R-4. It relates to affordable housing. Affordable housing is not found in R-1 and R-2. The Comprehensive Plan addresses how we are going to accommodate people that cannot afford the more expensive neighborhoods. In looking at this, he does not see the likelihood of apartment buildings being built on the South Street corridor. There are people that are eventually going to be elderly that will want to stay in the neighborhood and because of the cost of housing, will be forced into rental properties which will be found on arterial streets, such as South Street. In any transition between a commercial or an arterial street, there is a buffer district and the R-4 serves this purpose. He is in support of the downzoning on the interior; however, he has difficulty with the area long South Street, which he believes should be transitional and supports the business traffic. The R-4 will go up to the value of R-2 properties. He has difficulty downzoning land along South Street. Consideration needs to be given so that we don't prevent uses coming into a neighborhood such as affordability.

There was no testimony in opposition.

Carroll asked staff to discuss the question about the South Street corridor. Derek Miller of Planning staff acknowledged that the staff did consider that potential since it is on an arterial street and that corridor does have potential for some redevelopment, but agreed to go forward with the entire area as requested in the application.

Marvin inquired about the zoning on South Street between 26th and 22nd Street. Miller advised that the further east portion is R-2 but the further west portion is R-4.

Larson believes that the idea of leaving out the South Street area is important. South Street is going to undergo a widening project. However, he is most concerned about taking the two neighborhoods together. As a matter of procedure, he thinks it would be a good idea to separate the two neighborhoods. He does not want to set a precedence of bundling neighborhoods together for rezoning.

Carlson suggested that there are rental opportunities all over this neighborhood that are affected. Therefore, it seems like there are opportunities to live in this neighborhood as a renter. Miller agreed. Page 68 of the agenda lists some of the duplexes and multi-family units that exist. On the west side of 22nd Street, they are scattered about. The staff also provided a map showing owner versus rental. Most of the rental property (21%) is on the edges, but there are a few within the neighborhood.

Bills-Strand pointed out that some of the letters in support seem to indicate that this eliminates duplexes and this does not do that. Miller explained that the major difference between R-4 and R-2 is 10,000 sq. ft. of lot area for two-family dwellings versus 5,000 sq. ft.

Carroll understands that the multi-family dwellings will be changed to nonstandard uses. Miller advised that all multi-family dwellings in this study area are now considered nonconforming, so they will become nonstandard. Carroll confirmed that they can be rebuilt on the same footprint if destroyed. Miller clarified that if destroyed more than 60%, they would have to comply with R-2 requirements.

Marvin does not believe that South Street is being widened. It is being rehabilitated. It will continue to be four lanes with turn lanes.

Carlson suggested that it is actually better for multiple dwelling unit property owners if zoned R-2 rather than R-4 because nonstandard allows more flexibility than nonconforming.

Response by the Applicant

Wibbels referred to Mr. Balfour's testimony regarding 24th & South, and suggested that it is a classic example of where we inherited the sins of our fathers, meaning it was the Planning Commission and City Council, years ago before the Country Club Neighborhood Association, that gave special use permits to those properties which run with the land. This even further supports why we are here today – to protect the single family character.

In regard to Mr. Layman's testimony, she pointed out that he did see that the properties on South Street were going up in value and we all know that as you have an owner occupant in a property, they tend to take better care of the property. As a realtor, she knows that a rental typically can fester and spread and make other people want to move out. The South Street valuation increase shows that people are wanting to go back to the affordability factor and buy these homes on South Street.

As far as widening South Street, Wibbels confirmed that it is a rehabilitation project as opposed to a widening project. It is four lanes with turn lanes at the intersections. 17th to 27th will be rebuilt this year, with another section the following year.

As far as R-4 being a buffer zone, Wibbels submitted that R-2 on South Street is the buffer zone for the other R-4 on South Street. If the properties on the north side of South Street are R-2, then the other side should also be R-2 and jointly mirror each other as a buffer, or you change the other side of South Street to R-4.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 28, 2004

Main Motion: Carlson moved approval, seconded by Marvin.

Larson still feels strongly about setting a precedence of downzoning two neighborhoods at once.

Motion to Amend #1: Larson made a motion to amend to separate the two neighborhoods for voting purposes, seconded by Krieser.

Marvin pointed out that corporate and business interests are allowed to put properties together for purposes of development and the Commission doesn't vote on them separately.

Larson believes that a downzoning action is different.

Rick Peo of the City Law Department approached the Commission and advised that technically, the Commission only has one application before it. The Commission can vote on it in two parts, but it will be put on the Council agenda as one application. It is one application, and it was the applicants' choice to have one application. Secondly, the staff is not sure where the boundary line would be drawn separating the two neighborhoods.

Carlson pointed out that it is little pieces of each neighborhood association as opposed to the whole association area.

Carroll noted that there is only one legal description.

Vote on Motion to Amend #1 to separate the two neighborhoods failed 3-5: Larson, Krieser and Bills-Strand voting 'yes'; Marvin, Carroll, Taylor, Sunderman and Carlson voting 'no'.

Discussion on Main Motion: Carlson believes that if you look at the map, it is strategic. They are picking out specific areas. He heard comments about home ownership versus renter, but he does not know that that is the issue. There is a mix of owners and renters. What he hears is that this is a neighborhood that is built and, despite our planning philosophies, we have to acknowledge that these neighborhoods are built out and they are at very sufficient density. 21% of the properties are currently rental, so there is 1 in 5 opportunities to rent in the neighborhood. The existing uses are grandfathered and protected. This is a good trend. We have a neighborhood that is built out and succeeding and we should change the zoning to match what is happening.

Marvin commented that six months ago, he had to look through all of the assessed valuations of about 56,000 homes. Median is the mid-point and the mid-point is about \$110,000, which means half of the homes in this town are under \$110,000. The applicant showed us one that sold for \$79,000. As much as we are going to try to do what we can for infrastructure and

open up new land to provide for affordable housing, the days of the \$79,000 home are over, except in the older neighborhoods. The downzone helps protect those single family homes so that there is an opportunity to buy a house for under \$100,000 and live there. We do not want to lose this housing stock.

Motion to Amend #2: Carroll made a motion to amend to remove the South Street corridor from the change of zone request and keep it as R-4, seconded by Larson.

Discussion on Motion to Amend #2: Carroll believes that there needs to be a place for R-4 along the arterial street. There need to be places for renters that want to live in the neighborhood. He believes they should mirror the other side of South Street. It does not reflect into the neighborhood. It allows for some R-4 in that area.

Marvin believes that this strikes at the core of what older neighborhoods have to fight. You live in an area for 20 years, you have a home you like, the city grows, the streets get widened, and now we're not going to respect that single family home. We've seen that people are willing to buy single family homes on South Street. Single family can exist on South Street and this is where the affordable homes are located.

Carlson pointed out that there is a portion on the north side that is R-2 and some R-4. The R-2 exists because the neighborhood recognized the historical uses and single family. Doing this downzone basically recognizes the existing uses. It does not preclude a forward-looking project that might come forward. All this does is shift the burden of proof to the person that wants to come in and make a good change. It recognizes the existing investment the owners have made.

Bills-Strand asked Carroll if he would accept a friendly amendment to his motion, such that 27th west would stay R-4, and 27th east would be R-2. This was accepted by Carroll, the maker of the motion, and Larson, who had seconded the motion.

Vote on Motion to Amend #2, as revised. Motion to remove South Street west of 27th Street from the change of zone request (to remain R-4) carried 5-3: Larson, Carroll, Sunderman, Krieser and Bills-Strand voting 'yes'; Marvin, Taylor and Carlson voting 'no'.

Main motion, as amended, carried 8-0: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, and Bills-Strand voting 'yes'; Pearson declaring a conflict of interest. This is a recommendation to the City Council.

*** break ***

CHANGE OF ZONE NO. 04027
FROM R-2 RESIDENTIAL TO O-2 SUBURBAN OFFICE DISTRICT
ON PROPERTY GENERALLY LOCATED AT
SOUTH 48TH STREET AND PIONEERS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 28, 2004

Members present: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, Pearson and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted a faxed letter listing concerns of some of the neighbors.

Proponents

1. **Mark Hunzeker** appeared on behalf of the applicant and requested deferral until May 26, 2004. The applicant is contemplating an offer for the property that would involve a use that would not require this rezoning.

Carlson moved to defer, with continued public hearing and administrative action scheduled for May 26, 2004, seconded by Sunderman and carried 9-0: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, Pearson and Bills-Strand voting 'yes'.

COUNTY CHANGE OF ZONE NO. 04023
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
and
COUNTY PRELIMINARY PLAT NO. 04012,
THE PRESERVE AT CROSS CREEK 1ST ADDITION,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 68TH STREET AND ROCA ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 28, 2004

Members present: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, Pearson and Bills-Strand.

Staff recommendation: Approval of the change of zone and conditional approval of the preliminary plat.

Ex Parte Communications: None.

Proponents

1. Brian Carstens appeared on behalf of **Land II LLC**. This development consists of 37 acres at S. 68th and Roca Road. Immediately to the north is The Preserve at Cross Creek which was changed to AGR about two months ago. This is just a continuation of the same type of lots to the south, except that there is no floodplain. The County Board had expressed interest in developing this piece to the south to look at removing an access to 68th Street with everyone going down to the Roca Road intersection. It also brings a rural water district line through the subdivision. Carstens agreed with the conditions of approval set forth in the staff report.

There was no testimony in opposition.

Carlson pointed out that this is not shown in the Comprehensive Plan as AGR. Ray Hill of Planning staff concurred that it is shown as AG in the Comprehensive Plan. It is scored a 231 out of 300. Hill explained the history on the parcel to the north, which was recommended for denial by the staff and the Planning Commission, with the County Board recommending approval. Staff is recommending approval of this development because the parcel to the north was approved by the County Board. Not approving this parcel leaves a strip of AG in between and the County Board took the position that the corridor along 68th was a given for an area that should be used for acreages.

Pearson noted that the application is scored on the "information systems" criteria and that it is not based on a total of 300, but the minimum for a recommendation is 300. She does not know how many total points you can get. Hill did not know the possible total, either. He suggested that this project probably did not score as high as others because it is not in conformance with the Comprehensive Plan. Actually, abutting the AGR to the north will increase the score, so it actually will score higher than 231.

Response by the Applicant

Carstens commented that it would have been interesting to see what it did score as it sets today with the current zoning to the north. He assumes it would be well over 300.

COUNTY CHANGE OF ZONE NO. 04023

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 28, 2004

Larson moved approval, seconded by Krieser.

Carlson stated that he will vote against because he does not think bad policy choices should drive more bad policy choices. If the only reason your GIS score goes up is because the County Board approved the parcel that should not have been approved in the first place, it is not good rationale.

Motion for approval carried 7-2: Larson, Marvin, Carroll, Taylor, Sunderman, Krieser and Bills-Strand voting 'yes'; Carlson and Pearson voting 'no'. This is a recommendation to the County Board.

COUNTY PRELIMINARY PLAT NO. 04012

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 28, 2004

Larson made a motion to approve the staff recommendation of conditional approval, seconded by Krieser and carried 7-2: Larson, Marvin, Carroll, Taylor, Sunderman, Krieser and Bills-Strand voting 'yes'; Carlson and Pearson voting 'no'. This is a recommendation to the County Board.

SPECIAL PERMIT NO. 04018

FOR A PRIVATE RECREATIONAL FACILITY

ON PROPERTY LOCATED AT

3901 NORTH 27TH STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 28, 2004

Members present: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, Pearson and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff requested to strike the sentence in Analysis #2(b)(1): ~~However, these numbers were based upon the use of an incorrect parking calculation and presented as the maximum allowable numbers.~~ The numbers were revised and 350 students and 22 faculty staff persons per session is what is being requested.

Proponents

1. Mark Hunzeker appeared on behalf of the applicant, with no objections to any of the conditions of approval. However, he does have a question about Condition #2.1.3 to provide a physical description of the facility. He is not sure what that means. If it has to do with computing the parking ratios, he has no problem with it. Czaplewski concurred with Hunzeker's assumption.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 28, 2004

Marvin moved to approve the staff recommendation of conditional approval, seconded by Krieser and carried 9-0: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, Pearson and Bills-Strand voting 'yes'.

This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CITY SPECIAL PERMIT NO. 04008
AND COUNTY SPECIAL PERMIT NO. 04019,
WHITETAIL RUN COMMUNITY UNIT PLAN
and
CITY PRELIMINARY PLAT NO. 04003
AND COUNTY PRELIMINARY PLAT NO. 04014
WHITETAIL RUN,
ON PROPERTY GENERALLY LOCATED
AT S.W. 14TH STREET AND BENNET ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 28, 2004

Members present: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson, Krieser, Pearson and Bills-Strand.

Staff recommendation: Deferral until adoption of the Build-Through Standards.

Ex Parte Communications: None.

Ray Hill of Planning staff submitted a letter expressing concerns from John and Charlotte Luethje.

Proponents

1. Brian Carstens appeared on behalf of the applicant. This is an AG community unit plan on S.W. 14th and Bennet Road. This subdivision will have private roadways, individual wells and septic systems, with a gravel road at this time. The common area will continue to be farmed with an association created for the maintenance of the private roadway.

The site is just inside Tier II. They have clustered everything in the far corner as far as possible from the city future growth areas. Carstens pointed out that the owner has the right to carve the property into 20-acre parcels but the developer felt that clustering would be a better use of the property at this point.

Carstens requested to amend the conditions of approval to increase the centerline radius on the roadway coming in. The reason for this is the topography of the site where they weave up the hill and the private roadway runs on top of the ridge line. The applicant believes it provides a better design. There is not a private roadway design standard in the county regulations, and in the city it is only up to the three-mile jurisdiction. The rural public street design standards do not address this issue. Therefore, Carstens requested that Condition #1.1 be deleted.

Opposition

1. Charlotte Luethje, 12707 S.W. 2nd & Saltillo, who owns the 160 acres completely opposite of the proposed development, testified in opposition. The concerns are listed on their letter. They use their property in the CRP, but if their loan is denied another year, they would want to put cattle back on the 115 acres of grazing land. A fence has been maintained between the two properties. The fence is shared and it is a concern. The Luethje's do not want to lose the use of their land as it exists. They use it for hunting, camping, etc. Water is also a concern and the water is not good in their area. What effect will this have on their water supply? They are not on the rural water.

Staff questions

Pearson noted the performance score of -53 – how does a parcel get a negative number? Ray Hill explained that this is not a change of zone. This is taking the present zoning and using a community unit plan to cluster the development. The scoring is normally used for a change of zone.

Carlson believes that the Comprehensive Plan is fairly clear that new urban acreage development shall only be permitted in Tier II and Tier III.

Bills-Strand asked whether the number of homes would be limited on the Luethje property. Hill explained that the Luethje property is zoned AG and they could come in and do the same thing that this project is proposing. Generally, the AGR zoning requires 20 acres per lot, so they could subdivide their property into 20-acre lots as well. The limit would be how many lots they could get split into 20-acre parcels. They could do that at this time if they meet the zoning regulations. The clustering would require a community unit plan and preliminary plat.

Bills-Strand inquired about the timetable on the build-through standards. Marvin Krout, the Director of Planning, indicated that a conclusion was reached at the last City-County Common

meeting whereby the Planning staff was requested to proceed with the final draft of amendments. He anticipates that the code amendments will be coming forward to the Planning Commission in the next two to three months.

Response by the Applicant

Carstens reiterated that water will be provided by individual wells and a water report indicates adequate quality and quantity of water. There is a general note on the plan and the covenants that this is a farm area and customary agricultural uses are not a nuisance. The developer will not be removing any fencing along the common lot line. One of the developers is going to build his home there. The outlot will remain in greenbelt with the same tax levee that it currently has, and then the agricultural lots (clustered lots) will have a higher tax value because they will be buildable. Hunting on the ground would probably be considered a customary use in an agricultural area. The developer wants to be a good neighbor and he does not believe there is anything that would prohibit the enjoyment of the Luethje property that they have today.

Pearson moved to defer, seconded by Carlson.

Carlson believes the Comprehensive Plan occasionally gets bashed, but he believes it is clear on this point about build-through in Tier II and Tier III.

Pearson noted that there are several projects which have been deferred for the same reason. This project is not getting singled out.

Motion to defer until adoption of the Build-Through Standards carried 7-2: Larson, Marvin, Carroll, Taylor, Sunderman, Carlson and Pearson voting 'yes'; Krieser and Bills-Strand voting 'no'.

ANNEXATION NO. 04005
TO ANNEX PROPERTY GENERALLY
LOCATED AT S. FOLSOM AND W. CALVERT.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 28, 2004

Members present: Larson, Carroll, Taylor, Sunderman, Carlson, Pearson, Krieser, and Bills-Strand; Marvin left during the hearing.

Staff recommendation: Approval.

Ex Parte Communications: None.

Brian Will of Planning staff submitted one letter in support and one letter in opposition.

Brian Will of Planning staff explained that this annexation represents a petition submitted by eight property owners in the area for the purposes of obtaining water service. The properties petitioning to receive water are interspersed, so in order to remain consistent with the law pertaining to annexation, the boundary of the annexation includes additional properties that did not sign the petition.

Pearson noted that one of the letters in opposition talked about a retired person and the additional expenses that would be incurred by the property owners. Will explained that there are three categories of expenses: 1) increased property taxes; 2) impact fees that may be required as a result of connection to the city water system; and 3) any fees associated with an assessment district for the water for this area. Will submitted an estimate of the costs that was prepared the first time the Yankee Hill annexation came through the process.

Marvin inquired whether the city has any procedure for a low interest loan and five-year payback. Will stated that impact fees are due at the time of building permit and there is no provision for proration. The impact fee for water service is approximately \$1,088.00. The change in property tax rates could be approximately \$144.00 on the typical \$100,000 house. The assessment for the water district is estimated to be \$40.00 per linear foot. That cost, as opposed to impact fees, can be amortized out over 20 years.

Will clarified that the proposed annexation affects 17 residential properties, the Yankee Hill School and the Southwest Rural Fire Station.

Proponents

1. Tracy Schoen testified in support. She and her husband started the petition to get the water service. They initially stood along side the neighborhood association and agreed that the whole neighborhood need not be annexed because the Regional Center needed water, but they now stand on the fence because they need water. The homeowners that have signed the petition understand the additional costs, but those costs are considerably less than drilling, maintaining and testing a well and treating the water. Those who signed the petition need water and desire city water. It was not their intention to divide the neighborhood or do anything from which they would not benefit. The Schoen's live at the bottom of the hill and know that not too many houses away there is some pretty nasty water. The neighbors to the north rent their house and they have to treat their water. The renters are not allowed to drink that water. Digging a well will not improve the water. It costs upwards of \$3,000 to drill wells, plus maintenance costs and treatment costs. She also believes that this entire area will eventually get annexed anyway.

Opposition

1. Brent Braun, 3921 S. Folsom, received the letter concerning this annexation. He understands why the people want water. He has lived out there all his life. His concern and his questions are about the annexation map. Not all 17 properties want city water. According to the map, we're annexing some properties on the east side of Folsom, and from Calvert to Burnham we're annexing everything on the west side. He wants to know where the water line is going to run.

Dennis Bartels of Public Works advised that the water line has not been designed but he anticipates it will go down Burnham Street, and there is nothing to prohibit building in the street right-of-way regardless of whether it is in the city limits. He would guess that it would be built down the north side. Traditionally, we have the sewer on one side and the water on the other.

If that is going to be the case and the city is annexing the west side of Folsom and running the water line along Burnham, Braun does not understand why the proposal does not annex all the property along there.

2. Randy Shoemaker, 3935 S. Folsom, testified in opposition. He agreed with Mr. Braun that those that need the water should be annexed, but he believes there needs to be more consideration for the other properties that are proposed to be annexed that do not want to be annexed and that have water. This will result in a rural fire barn in the city limits. The bond is not paid yet. Do we stop paying on that bond once we are annexed? If so, who picks up that tab? Lifestyle is also a consideration when annexing property. Some of the animals will not be allowed upon annexation. Who do you call for law enforcement? Who maintains the streets?

3. Alyce Long, 605 W. Calvert, testified in opposition. This will come past her property to get to the next house and stop. She is satisfied with her well. She does not want to have to sell out.

Staff questions

Pearson asked staff to further explain the reason for the proposed boundaries of the annexation. Will indicated that the staff was responding to a request from property owners in the area to get water, which requires annexation. The staff believes it was necessary to respond in the affirmative and demonstrate how it can be accomplished. The goal was to keep the number of properties being annexed to a minimum. However, we cannot just annex "down the street". We have to take more property according to law. This proposal is our best attempt to include all the owners seeking annexation but to do it in a manner that will pass the legal test for annexation.

Pearson pointed out that Mrs. Long may have a neighbor whose property will be more valuable upon annexation but yet she is on a fixed income.

Carlson believes that the staff recommendation for the previous annexation in this area attempted to bring in the entire area. Will acknowledged that the original annexation request came to the city and the boundary was drawn including many more properties in the area, which was defeated. This boundary is drawn only in response to those petitioners who want water. A property owner may stay on rural well water even inside the city limits, with a biannual inspection by the Health Department. If you retained your own well, you would still be responsible for the portion of the water assessment, but would not be responsible for the impact fees. Dennis Bartels of Public Works clarified that in Folsom Street, the city anticipates building a 16" water main which is covered by impact fees – we can't assess a 16" water main. If they don't have direct frontage on the 16" main they might well have to pay an assessment. If they have a well and don't want to hook up, they would not have the water charges. If you want city water, you will pay the impact fee, the connection fee and whatever the plumber charges to get from the main to the house.

As far as maintenance of the streets, Dennis Bartels suggested that with the limited annexation that Council approved with Folsom Street being inside, you are already going through the city to get to these county roads. There are interlocal agreements as far as the routine maintenance. As far as different street standards, the city does not routinely go out and gravel roads. The property owner might have to pay for the gravel. With a limited annexation, there are some jurisdictional problems built in. We've already created that problem to a certain extent for law enforcement and snow removal because of the previous annexation limits that were restricted to the Regional Center property.

Bills-Strand inquired whether the area north of the Bailey house is in the city limits. Will stated that it is outside of the city limits. Bills-Strand inquired as to what happens if they are not annexed. Will stated that they would need to proceed with digging wells.

Bills-Strand inquired as to how long it will be before the city surrounds this area and annexes it. Will does not believe we are looking at a 2-5 year time frame, although it is hard to tell. Ray Hill of Planning staff advised that when the staff was told by the City Council that this area should not be annexed, it was anticipated that we would have this type of annexation until the entire area is annexed. As the wells go bad, they will come in and ask for annexation, and each time there will be those that object because we cannot get to them without annexing someone else.

Response by the Applicant

Ms. Schoen reiterated that they do not want to force anyone into anything that they do not want. This is the result of an agreement the property owners had with the state to allow the property

owners to have water, and it is one of those weird situations where there is no protocol. We do have city sewer.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 28, 2004

Larson moved approval, seconded by Bills-Strand for discussion.

Pearson stated that she will vote against. She would rather see it be truly contiguous, which she does not believe this proposal represents. This may meet the letter of the law but she does not believe this meets the intent of the law. When they say contiguous, they mean next-to and not sneaking down in an L-shape or a J. She understands the concerns about water, but we have to look at fairness to the entire neighborhood.

Bills-Strand stated she will vote in support because the state took away their water. Without annexation, they are forced to drill wells. They will eventually be annexed. It may be snaking through an area to take care of serious water needs, but she thinks it should be done.

Carlson pointed out that the Planning Department's original recommendation was based on their best planning principles and the City Council gave the direction to change. It comes back again. What's the planning principle here? Typically when we start to get out there, we start to get contiguous. The question is, are they going to be annexed by the City or not? We've got to fall back on the planning principle, but the City Council made the decision as to how they wanted to proceed with the politics on it.

Motion for approval carried 7-1: Larson, Carroll, Taylor, Sunderman, Carlson, Krieser and Bills-Strand voting 'yes'; Pearson voting 'no'; Marvin absent. This is a recommendation to the City Council.

COMPREHENSIVE PLAN AMENDMENT NO. 04002
ADOPTING THE AIRPORT NOISE COMPATIBILITY STUDY
AS AN APPROVED SUBAREA PLAN
and
CHANGE OF ZONE NO. 04024
TEXT AMENDMENTS TO THE ZONING ORDINANCE
TO ADOPT REVISED STANDARDS FOR THE
AIRPORT ENVIRONS NOISE DISTRICT.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 28, 2004

Members present: Larson, Carroll, Taylor, Sunderman, Carlson, Pearson, Krieser, and Bills-Strand; Marvin absent.

Staff recommendation: Approval.

Ex Parte Communications: None.

Duncan Ross of Planning staff submitted two letters in opposition.

Ross gave a history of the proposal. The staff briefed the Planning Commission on February 4, 2004, and reviewed the general concept of the noise study and why it was undertaken. Today, the staff is following up with the two related applications, the Comprehensive Plan Amendment and the Change of Zone text amendment. The Comprehensive Plan Amendment has three main parts: 1) updating the Comprehensive Plan to include the noise study as a subarea plan that provides policy guidance when reviewing land use actions in this area; 2) as a result of the noise study recommendation, we are proposing to approve the request by Duane Hartman to change approximately 80 acres currently designated commercial to residential; and 3) (unrelated to the noise study), expanding the future service limit in the area of S.W. 40th and West "A" to include approximately 115 acres in Priority A of Tier I.

The change of zone brings forward a number of recommendations that are identified in the noise study, including extending the district requiring avigation and noise easements to include areas out in the future growth areas which are today under the flight of military training aircraft. As this area develops, we would like to see the avigation and noise easement extended to future properties. In 1980, the previous noise study was completed which identified the noise contours used for regulation today. This study updates those noise contours and the new contours are generally narrower and shorter than the ones used today, including the 60 day/night noise sound level. This proposal also modifies a number of other areas of the ordinance, some minor and some more in keeping with language and definitional changes that update the ordinance to reflect what we have done with the rest of the ordinance over the last 20 years. The noise contours themselves provide further restrictions on what types of uses can be located within that noise contour. The proposed noise contour substantially reduces the number of nonconforming uses and it does not create any additional nonconforming uses. These are uses very close to the airport that are today considered nonconforming. The new noise contours substantially improve the nonconforming status of a lot of property.

Ross advised that the Planning Department notified about 1400 individuals and property owners in January for a public information meeting held on February 2, 2004. Since January and with the recent notification for this meeting, the Planning Department has received a lot of phone calls.

Ross then requested that the Commission defer these applications until May 26th due to updated information which the staff received this morning.

Carlson sought clarification of "lowering the standard to 60". Does that mean we are lowering the noise threshold at which additional protections need to be created? Ross explained that

it means that we are identifying a new threshold of significance for noise. 60 is a lower noise contour than the current 65 noise contour. We are doing this because the footprint between the current regulations and the new ones are very similar and after 20 years of research on how noise impacts individuals, it has been recommended through the noise study that we go to the new 60 significant noise threshold.

Carlson moved to defer, with continued public hearing and administrative action on May 26, 2004, seconded by Krieser and carried 8-0: Larson, Carroll, Taylor, Sunderman, Carlson, Pearson, Krieser, and Bills-Strand voting 'yes'; Marvin absent.

COUNTY SPECIAL PERMIT NO. 04012
FOR A WIRELESS FACILITY
AND A REQUEST TO WAIVE THE FALL ZONE,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 148TH STREET AND HIGHWAY 2.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: April 28, 2004

Members present: Larson, Carroll, Taylor, Sunderman, Carlson, Pearson, Krieser, and Bills-Strand; Marvin absent.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

Proponents

1. Doug Rogers of LCC International presented the application on behalf of **US Cellular**. This is their third and final new tower for this project. Rogers agreed with the staff conditions of approval.

Carlson noted receiving a letter suggesting that a monopole be considered rather than the lattice tower. Rogers indicated that a 250' monopole is rare to find. A 250' monopole would be anywhere from 7 to 10 feet in diameter at the base. It has been his experience that in more dense areas, a monopole is easier to stick in behind trees and hide, but at this location he believes a monopole would stick out worse than the lattice tower. The lattice tower has a 9" diameter at the base and tapers up. It also provides open areas through which to see.

Opposition

1. Jim McGurk, 9725 S. 148th Street, which is 1/3 mile from the proposed site, testified in opposition. His property is the closest farm and residence and he is unequivocally opposed. This will totally affect the quality of life he and his wife now enjoy. It will adversely affect their

future use of the farmstead. There is no guarantee that the facility will not cause interference because of the lighting and signals that are emitted from it. McGurk also disagrees with the waiver of the fall zone. He advised the Commission that this project was offered to him for location on his property for \$1200/month and he rejected it. There are already 13 lighted towers on the horizon that can be seen from his residence and they interfere with the enjoyment of the night sky. It is McGurk's position that this tower will totally change the entire neighborhood of rural life and future development of this area for the profit of a few.

Pearson asked staff to explain the "sensitive" location issue. Brian Will of Planning staff explained that there are three site locations – preferred, limited preference and sensitive. This one is being located in a sensitive location, thus there is a higher standard of review applied in that the applicant is required to demonstrate that they cannot collocate on any other tower within ½ mile. The applicant has demonstrated that they cannot collocate on any other tower in the area and still provide the level of service desired. This carrier went above and beyond in that some of the towers they considered were 5 miles or more away from the proposed location. The standards require ½ mile.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 28, 2004

Carroll moved to approve the staff recommendation of conditional approval, seconded by Larson and carried 7-1: Larson, Carroll, Taylor, Sunderman, Carlson, Krieser and Bills-Strand voting 'yes'; Pearson voting 'no'; Marvin absent. This is a recommendation to the County Board.

Chair Bills-Strand then reviewed the Commission's May schedule:

May 12, 2004	11:30-1:00 p.m.	Briefing on North 48 th Street/ University Place Subarea Plan and Capital Improvements Program
May 12, 2004	1:00 p.m.	Regular Public Hearing
May 19, 2004	1:00 p.m.	Special Public Hearing on Comprehensive Plan Annual Review, Capital Improvements Program and Transportation Improvement Program
May 26, 2004	12:00-1:00 p.m.	Workshop: Procedures and Legalities
May 26, 2004	1:00 p.m.	Regular Public Hearing

There being no further business, the meeting was adjourned at 3:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on May 12, 2004.

F:\FILES\PLANNING\PC\MINUTES\2004\pcm0428.04.wpd